

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRUCE R. BANTHER, JR.,	§	
	§	No. 415, 2006
Defendant Below,	§	
Appellant,	§	Court Below--Superior Court
	§	of the State of Delaware in and
v.	§	for Kent County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 9705000270
Appellee.	§	

Submitted: August 21, 2006
Decided: September 19, 2006

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

ORDER

This 19th day of September 2006, upon consideration of the appellant's *pro se* letter purporting to appeal the Superior Court's denial of a motion to dismiss indictment, the Clerk's notice to show cause, and a letter submitted by the appellant's defense counsel, it appears to the Court that:

(1) The appellant, Bruce R. Banther, Jr., is awaiting a retrial in the Superior Court on a charge of Murder in the First Degree.¹ Banther is represented by counsel in the Superior Court. On August 2, 2006, Banther filed a *pro se* notice of appeal

¹This is Banther's third trial on this charge. In 1998 and again in 2004, a Superior Court jury convicted Banther of first degree murder; however, each time the conviction was reversed on direct appeal. *See Banther v. State*, 823 A.2d 467 (Del. 2003) (reversing and remanding for new trial); *Banther v. State*, 884 A.2d 487 (Del. 2005) (reversing and remanding for new trial).

from the Superior Court's order of July 18, 2006, that denied a motion to dismiss indictment.

(2) Upon receipt of the *pro se* notice of appeal, the Clerk issued a notice to show cause to Banther. The Clerk sent a copy of the notice to show cause to Banther's counsel ("Counsel").

(3) The Clerk's notice directed that Banther show cause why the appeal should not be dismissed based on this Court's lack of jurisdiction to consider an appeal from an interlocutory order in a criminal case. Banther did not respond to the notice to show cause.

(4) On August 9, 2006, Banther's counsel ("Counsel") filed a letter in response to the notice to show cause. Counsel agreed that the Court lacks jurisdiction to consider a criminal interlocutory appeal. Counsel noted, however, that Banther's letter also sought the issuance of a petition for a writ of prohibition, a matter over which the Court has original jurisdiction.² Counsel indicated that he intended to file a formal petition for a writ of prohibition on behalf of Banther.³

²See Del. Supr. Ct. R. 43 (governing exercise of Court's original jurisdiction over proceedings involving certain extraordinary writs).

³Counsel filed the petition on August 11, 2006. The State has filed an answer and motion to dismiss. The matter is pending before the Court. Answer and motion to dismiss at 3, *In re Banther*, Del. Supr., No. 432, 2006 (Aug. 28, 2006).

(5) Be that as it may, to the extent Banther's letter purports to appeal the Superior Court's denial of a motion to dismiss indictment, the Court lacks jurisdiction to consider it. The Delaware Constitution limits the Court's appellate jurisdiction in criminal matters to final judgments.⁴ This Court has held that the denial of a pretrial motion to dismiss indictment is not a final judgment for appeal purposes.⁵

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 29(b), that the appeal is DISMISSED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁴Del. Const. art. IV, § 11(1)(b).

⁵*See Gibbs v. State*, 1989 WL 16875 (Del. Supr.) (dismissing impermissible interlocutory appeal from denial of motion to dismiss indictment in criminal case). *See generally In re Hovey*, 545 A.2d 626 (Del. 1988) (comparing Court's appellate jurisdiction in criminal cases and original jurisdiction to issue a writ of prohibition).